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## The Enforcement of the 2009 Law Number 46 on Corruption Court: The Role of Special Corruption Court

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**Abstract:** The Corruption Court is an independent special court under the General Court. The objectives of creating the Corruption Court is, *inter alia*, to adjudicate the corruption cases, to eliminate the interference of other party involves in corruption cases, to keep the Court runs in the right path. Herein, in the concept of rule of law, justice principle, under the ideology of Five Principles of *Pancasila* may only work well if it accompanied with other principles of social, economic, political, ideological, ethnic, racial, religious, color, and even gender background. Hence, the Judges have dual function both as sanction giver but also to deter other people not commit the same crime. In this connection, the preventive measures, such as counseling and providing legal information, as well as socialization of Corruption Law are perceived to be urgent as a new method for Indonesian in combating the corruption. This study is a normative one but employing empirical- juridical approaches. The normative research was conducted to analyze the theoretical matters of legal principles, while the empirical approach employed in the form of observing the behavior of the suspect of corruption. The findings of the study shows that the Art. 53 of the 2002 Law Number 30 it was in contradiction to The 1945 Constitution for the corruption cases cannot be tried in two different courts. That is the idea of the establishment of the Corruption Court as a special court besides the so-many corruptions committed in Indonesia where the verdict of the District Court is beyond the people's justice.

**Keywords:** Corruption; Corruption Court; Law Enforcement.

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### INTRODUCTION

Corruption as an extraordinary crime affects the sustainable development in Indonesia. The culprits have no guilty feeling,

shameless, fearless or even feeling of being sinful from those of corruptor. Since the corruption is an extraordinary crime it requires more serious legal handling.<sup>1</sup>

Corruption slowly emerges as a disease that could bring destruction to the State's economy. Whether or not, corruption practices taken places in Indonesia cause a lot of damages. They occur not only in economical area, but also in those of politic,

<sup>1</sup> Faisal Santiago, 2014, "Strategi Pemberantasan Kejahatan Korupsi, Kajian Legal Sosiologis", *Jurnal Lex Publica*, 1 (1), p57.

socio-culture, and security<sup>2</sup> and defense areas. Corruption is one of the significant problems in Indonesia and even becomes a chronic practice from private to the state agencies.<sup>3</sup>

The word ‘corruption’ originates from the Latin word namely ‘corruptus,’ or ‘corrumpere’ which means to bribe or to destroy. The terms above are also found in other languages. In the French terms is almost similar with the term corruption in English term but it has different in pronunciations. In the Dutch term is ‘*corruptive*. Furthermore, in the *Bahasa*, it called ‘*korupsi*.’ However, all the terms mentioned above refer to ‘rotteness,’ ‘ugliness,’ ‘depravity,’ ‘dishonesty,’ ‘bribe,’ ‘immorality,’ deviation from sanctity<sup>4</sup>.

The establishment of the Corruption Eradication Commission (CEC/KPK)<sup>5</sup> and Corruption Court (CC)<sup>6</sup> are to indicate that corruption is not only seen as an ordinary crime but rather extraordinary crime. This statement is mentioned in the Elucidation of the Law Number 30 of 2002 on the CEC.<sup>7</sup> The CEC and the CC are just like the panacea to heal mental illness. Thus, the duty and the mandate of the CC are to examine and decide on criminal acts of corruption whose prosecution is filed by the CEC.<sup>8</sup>

If one looks back to the existence of special courts in Indonesia, the creation of CC is not something new, for there have been established already the special courts prior the Reformation Era in Indonesia in 1998. Those Special Courts are the Economic Court,<sup>9</sup> the Juvenile Court.<sup>10</sup> Another special court established was the Commercial Court through the Government Regulation Number 1 of 1998. Furthermore, the law regarding the creation of the CC was the 1998 Law Number 4. Other special court is the Tax Court (the Law Number 14 of 2000), The Human Rights Court (the Law Number 26 of 2000), The Corruption Court (the Law Number 46 of 2009), The Industrial Relations Dispute Settlement Court (the Law Number 2 of 2004) and finally the Fishery Court (the Law Number 31 of 2004).

Article 6 of the CEC provides the mandate for the CC which declares that under this Act, the CC was established and authorized, examine and also decide the criminal acts of corruption whose prosecution is logged in the CEC. However, in the process of CEC, it does not really run smooth as it is expected. It was when the Constitutional Court (MK)<sup>11</sup> granted a request for a judicial review of the Law Number 30 of 2002. The MK stated that Article 53 of the CEC was in contradictory to the 1945 Constitution.

Furthermore, the MK was of the opinion that the CC should have been excluded and been regulated separately from the

<sup>2</sup> Deni Styawati, *KPK Pemburu Koruptor*, Cet I, Yogyakarta: Pustaka Timur, 2008, p1.

<sup>3</sup> Achmad Zainuri, *Akar Kultural Korupsi di Indonesia*, Depok: Cahaya Baru Sawangan, 2007, p15.

<sup>4</sup> Andi Hamzah (I), *Korupsi di Indoneisia Masalah dan Pemecahannya*, Jakarta: Gramedia Pustaka Utama, 1991, p7.

<sup>5</sup> Hereinafter is cited as CEC or KPK. KPK stands for “Komisi Pemeberantasan Korupsi.”

<sup>6</sup> Hereinafter is cited as “CC”.

<sup>7</sup> General Explanation of Law Number 30 of 2002 on the Corruption Eradication Commission.

<sup>8</sup> Article 53 CEC.

<sup>9</sup> Emergency Law Number 7 of 195.

<sup>10</sup> The Law Number 3 of 1997 concerning the Juvenile Court (amended by Law Number 11 of 2012 on the Criminal Justice System of the Child).

<sup>11</sup> Hereinafter is cited as “MK/Mahkama Konstitusi”.

2002 Law Number 30. Nevertheless, the Constitutional Court did declare that the Article 53 still had a binding legal force<sup>12</sup> until a change was made within 3 (three) years after the decision was pronounced.<sup>13</sup> The three-year deadline aimed at the process of drafting a new law by the government and the People's Legislative Assembly. After the enactment of Law Number 46 of 2009 on the CC, the problems associated with the practice of the CC began to emerge, such as the issues of the budget, infrastructure, and also the issue regarding the CC's judges which attract the public's intention and also the anti-corruption activists as well.

## DISCUSSION

### The Authority of the Special Corruption Court on the Prevention of Corruption

Corruption is everywhere and also found in every country. The terms used are dissimilar but it refers to the same meaning. Such as "*gin moun*" in Thailand which means "eat the nation." "Tanwu" is a term used in Chinese which means "greed of the greed. Meanwhile in Japan is calls "oshoku" means "dirty work".

Frankly speaking, corruption is an action that is highly disrespectful and can harm a nation. Legal definition one will find in the 1999 Law Number 31 concerning the CC that those included in corruption are: "Every person who is categorized as

illegal, commits self-enrichment, benefits himself or another person or a corporation, misuses his authority or opportunity or facilities because of his position or position that can harm the state's finances or the country's economy."

In this law, Corruption Crimes are expressly formulated as formal crimes. This is very important in the proof. With this formulation, although the property obtained from corruption has been returned to the state, the perpetrators of corruption will still be brought to justice and remain convicted.

According to Thomas Aquinos, the law that intersects *iustum* (justice) is absolutely a product of reason. Aquinos differentiates three categories of justice, namely distributive justice, commutative justice, and legal justice. *Iustitia distributiva* (distributive justice) refers to the principle to the same is given the same, to the unequal given is not the same. This is called geometric equilibrium. (ii). *Iustitia commutativa* (commutative or exchangeal justice) refers to justice on the basis of arithmetic principles<sup>14</sup>, ie adjustments to be made in case of unlawful deeds. (iii). *Iustitia legalis* (legal justice), which refers to obedience to the law.

The corruption offense is expressly described in Chapter II on Corruption and Chapter III on other criminal offenses related to criminal acts. Chapter II consists of Articles 2 to 24. Formal illustrations have some loopholes, if there are some acts of corruption not covered in the formulation above, the perpetrator (suspect) cannot be brought before the judge. Art. 1 the Indone-

<sup>12</sup> The Indonesian Constitutional Court have a final and binding decision. It means that there are no any possibilities for appealing the decree of the Constitutional Court. Nurhidayatulloh, 2012, "Dilema Pengujian Undang-Undang Ratifikasi oleh Mahkamah Konstitusi dalam Konteks Ketetangaraan RI," *Jurnal Konstitusi*, 9 (1), pp113-134.

<sup>13</sup> The Constitutional Court, The Decree of the Constitutional Court Number 012-016-019/PUU-IV/2006, p290.

<sup>14</sup> Bernard L. Tanya, Yoan N. Simanjuntak, Mark Y. Hage, *The Theory of Legal Strategy for the Order of Men Passing Space and Generation*, Yogyakarta: Genta Publishing, 2010, pp59-60.

sian Penal Code mentioned "not as a punishable act, no rules governing it. This is actually difficult for investigations and prosecutions but instead makes it easier for judges to prove.

Article 27 Para. 1 of the Law Number 48 of 2009 on Judicial Power explains another example of special courts where Special Courts as formulated in this provision are Juvenile Courts, Commercial Courts, Human Rights Court, Corruption Court, Industrial Relations Courts and Fishery Courts are located under the General judiciary, as well as Tax Court which is under the Administrative Court.

Based on the explanation above, it is obviously clear that the 2004 Law Number 4 on Judicial Power does not provide any definition or meaning of a special court, but only examples of the special courts. Some of the special courts mentioned above actually had been established prior the enactment of the 2009 Law Number 27 of 2009. The Juvenile Court was regulated by Law Number 3 of 1997 on Juvenile Court (as already amended into Law Number 11 of 2012 on the Child Criminal Justice System), The Commercial Court was regulated by Government Regulation Number 1 of 1998, the Human Rights Court was regulated through the Law Number 26 of 2000, the Law Number 2 of 2004 regulated the Industrial Relations Court and the Law Number 14 of 2002 regulated the Tax Court. Two other similar related to "special" courts, namely the existence of special judges with special competence.

Philosophically the drafting of Corruption Court Law as a Special Court is

based on the following three considerations:<sup>15</sup>

1. The establishment of the Corruption Court with the presence of particular judges who have the expertise is intended for future corruption cases. It is related to the procurement of goods and services, land, taxes and associated with the destruction of natural resources which could be examined and prosecuted professionally and objectively and not always depended on the information of the so-called experts. The existence of an ad hoc judge in a Corruption Court is expected to dismiss the concerns of the panel of judges influenced by expert opinion without attempting to be critical. The Law Number 8 of 1981 on Criminal Law states that in the imposition of a criminal, a judge's verdict must be based on at least two pieces of evidence leading to his conviction that the suspect is guilty.
2. The United Nations Convention against Corruption (UNCAC), ratified through the Law Number 7 of 2006, is a commitment of the Indonesian government regionally and internationally to prevent and eradicate corruption, both in public and private sectors. One of the goals of reform in the field of corruption prevention based on that convention is the reform in the field of legislation. In the field of judicial power, the reform of the Judicial Authority law, the Supreme Court Law and the General Court Law are implemented. However, general legislation reforms were inadequate so that

<sup>15</sup> [www.suduthukum.com](http://www.suduthukum.com) (retrieved: July 10, 2017).

in the object of certain cases and concerning certain legal subjects still required reforms both structurally and functionally. One of the reforms is the establishment of a Special Court for Corruption Crimes.

3. The Reform in the field of judiciary, especially about corruption is driven by a growing number of corruption cases in Indonesia. It covers enhancement and involvement of all elements of state organizers (executive, legislative and judicial)<sup>16</sup> on the one hand, and on the other hand, the level of public confidence in the career judges is declining. This condition requires special handling through the assistance of ad hoc (non-career) personnel besides the career judges.

Observing Loebby Loqman's idea, that law enforcement practices in the case of eradication of corruption have an effect on the workings of Integrated Criminal Justice System as regulated by the Code of Criminal Procedure (KUHAP), so that if the system is integrated it will end the possibility of weakening in law enforcement.<sup>17</sup>

According to the data, the Final Reports of the 2010 and 2011 data in the Supreme Court<sup>18</sup> indicated that In 2010,

there were 32 cases in the Corruption Court, at the Central Jakarta District Court. Previously there were only 12 cases in 2009. The total number of cases handled in 2010 was 44 cases. The number of cases in 2010 decreased to 51 (56%) from 2009 which received 64 cases. From the whole cases during 2010, it successfully completed 34 cases. The rate of settlement of corruption cases in Central Jakarta was 79.07 %. In 2011, the cases registered by 33 Corruption Courts were 872 cases; the rest of the cases in 2010 were 392 cases, so the number of cases handled during 2011 was 1,264 cases. From all the cases handled, the Corruption Court had completed 466 cases (63.13 %).

According to the data, *modus operandi* of the crime takes places in many forms. In other words, *raison de'tre* of crime depends on the social values, cultural aspects and the structure of the community.<sup>19</sup> Although in every corruption case has a unique background or causes, essentially all of them has similar elements as stipulated in the legal definition addressed in the corruption law. Hence, the authorities will analyse the *raison de'tre* of crime and suit it with the existing law in Indonesia.<sup>20</sup> As Bagir Manan argue that law is the highest source

<sup>16</sup> The states organs namely legislative, executive and judiciary bodies. Nurhidayatulloh, et al., 2018, "Forsaking Equality: Examine Indonesia's State Responsibility on Polygamy to the Marriage Rights in CEDAW," *Jurnal Dinamika Hukum*, 18 (2), p187.

<sup>17</sup> Loebby Loqman, *Beberapa Ichwal di Dalam Undang-undang Nomor 3 Tahun 1971 Tentang Pemberantasan Tindak Pidana Korupsi*, Jakarta: Datacom, 1991, p5.

<sup>18</sup> ICW Study Results on free verdicts against corruption defendants in the General Courts,

Available from: [www.antikorupsi.org](http://www.antikorupsi.org) (retrieved: July 10, 2017).

<sup>19</sup> Sahetapi, *Globalisasi dan Kejahatan*, Seminar Criminology Ke VI, Semarang, 9-2 December 1994, p3.

<sup>20</sup> The purpose of punishment are preventing the perpetration of crime by enforcing the rule of law for the sake of the community, socializing convicted by conducting coaching so as to be good and useful, resolving conflicts, and restoring balance and peace in society, and relieving guilt on the convict. Eddy Rifai, 2017, "An Analysis of the Death Penalty in Indonesia Criminal Law," *Sriwijaya Law Review*, 1 (2), p190-199.

in regulating and determining the legal relationship between the State and society as well as between members or community groups.<sup>21</sup>

The Constitutional Court Decree Number 012-016-019/PUU-IV/2006 stated that Article 53 of the 2002 Law Number 30 is a contrary to the 1945 Constitution. Thus, corruption cases could not be examined in two different courts namely the Jakarta Corruption Court and the district court.

The establishment of the Corruption Court as a competent court to review the Corruption cases was motivated by the spirit of reform to eradicate the widespread corruption in Indonesia. It was reflected in Law Number 30 of 2002 on the Corruption Eradication Commission. Then, in 2006, through the decision of the Constitutional Court Number 012-016-019/PUU-IV/2006 in December 2006 the establishment of Corruption Court in the Law Number 30 of 2002 was declared contradictory to the 1945 Constitution.

The establishment of the Corruption Court should be established by a specific law separated from the Law Number 30 of 2002. Eventually, the specific law establishing Corruption Court is legalised through the Law Number 46 of 2009 and The Corruption Court had been established in 33 Indonesian Provinces by the end of 2011.

The sharp spotlight from the public began to emerge when some Corruption Courts in the district decided to release some defendants of the corruption. Since then, the public question the usefulness of the Corruption Court establishment in the

regions where it is very obvious that there is something wrong in the judicial process<sup>22</sup>. Some experts argued to evaluate the existence of a Corruption Court related to some of the accused freed decisions and allegations of bribery by some judges in the region.<sup>23</sup>

### **The Efforts to Prevent Corruption in Indonesia**

As mentioned early on, the corruption is a very extraordinary crime where the perpetrators are hard to trace, since the existence of the corruption is frequently occur in the government instances or in the Government State Own Company (BUMN) which is difficult to investigate. Corruption also is named as an invisible crime where the evidence is very difficult to obtain, and the *mode operandi* is systematic and congregational.<sup>24</sup>

Satjipto Rahardjo said that the prevention and the combating of corruption must be conducted in a different way and

<sup>21</sup> Nitibaskara, Ronny Rahman, *Tegakkan Hukum Gunakan Hukum*, Jakarta: PT. Kompas Media Nusantara, 2007, p26.

<sup>22</sup> In the annual report of the Supreme Court of the Republic of Indonesia mentioned that one of the corruption court establishment problems is the budget availability. The mandate of Article 35(1) of the 2009 Law Number 46 on the Corruption Court is that the court required to be established in each capital city of the province. In 2010 the Supreme Court gradually planned to establish 17 corruption courts. But the Supreme Court had a limited budget because it had been allocated effectively to other priority work units. To overcome this problems, the Supreme Court had requested an additional budget through APBN-P in 2010, but it was failed. The Supreme Court of the Republic of Indonesia, 2010, The Supreme Court Annual Report 2010, Jakarta: The Supreme Court, p345.

<sup>23</sup> Interview with the deputy director of LeIP concluded that this was a consequence of the Constitutional Court's decision in 2006.

<sup>24</sup> Mien Rukmini, Rukmini, *Aspek Hukum Pidana dan Kriminologi (Sebuah Bunga Rampai)*, Bandung: Alumni, 2009, p2.

beyond the prevalence of other crime countermeasures.<sup>25</sup>

Asset recovery is one of effort the Government can do through law where the assets obtained from this corruption cannot be enjoyed or hidden by him or her.

Haynes said that a new paradigm in handling crime can be done by eliminating the motivations of criminals to commit crimes, by preventing them from enjoying the results of the crimes they commit. Corruption is the blood of the crime. It just like the blood that supports the crime and this is the weakest point to detect crime chain.<sup>26</sup> The efforts to cut this crime chain are relatively easy to do, and it will also eliminate the offender's motivation to commit a crime.

The legalization of the 2010 Law Number 8 on Money Laundering is a new method to prevent and combat crime through the “following the money” principle. The money laundry law can penetrate bank secrecy. Herein the “follow the money” principle is as an instrument in preventing and combating corruption. Although the Law on Money Laundering is regarded as a special preventive law on money laundering, nevertheless, this law prevents and combats other crimes as regulated in Art. 2 of the Law on Money Laundering. The object of the crime of money laundering is derived from the original criminal acts such as the proceeds of the property.

Combating corruption through the implementation of money laundering law

must be done seriously by prioritizing the principles of criminal law as an integrated policy. It means that not only something which is fragmentary, partial and repressive but also it must be pursued in the direction of negating or overcoming and improving the overall causation and conditions that become criminogenic factors for the occurrence of corruption. So an integral strategy is needed.<sup>27</sup>

If the money laundering formula is examined, there are two types of the criminal act, i.e., crimes that generate illicit money such as corruption and money laundering. Both types of criminal offenses raise questions within the evidentiary system, whether the act of corruption should be proven first, so that money from laundered corruption could be classified as a money laundering.

The qualification of money laundering crimes is defined as the placement of assets known or reasonably suspected to be the proceeds of a criminal offense to the financial services provider, either on his behalf or on behalf of others. Under this provision, the act of corruption is not necessary to be proved in advance, directly by the knowledge or the allegation that the illicit money is derived from an act of corruption if sufficient initial evidence exists.<sup>28</sup>

Many people believe that corruption in Indonesia has been entrenched, and lasted for generations. One of them is the founding father of our nation, Bung Hatta. The phenomenon of corruption becomes a

<sup>25</sup> Satjipto Rahardjo, *Membedah Hukum Progresif*, Jakarta: Kompas, 2006, p127.

<sup>26</sup> Quoted from a paper written to support the Indonesian Delegation at Forty-Seventh Session of The Commission on Narcotic Drugs, held in Vienna 15-22 March 2004, p2.

<sup>27</sup> Barda Nawawi Arief, *Pokok-Pokok Pikiran Pembaharuan Undang-Undang Pemberantasan Korupsi*, Seminar Paper at UNSOED, Purwokerto, 199, p29.

<sup>28</sup> Article 69 of the Law Number 8 of 2010 on Money Laundering.

behavior, not only in the bureaucracy but also in the business, the private sectors, even in all members of society. If this is left alone, it will be difficult to eradicate it, because almost all members of society are involved in it, either as a giver, receiver or requester of bribery<sup>29</sup>.

The accumulation of wealth to a group of ruling elites has occurred since a long time ago. Examples of this custom were tax payments to rulers such as kings and royal knights, or commonly known as the noble class. The kings and nobles had to live on an individual level more than ordinary people. They might impose a tax on his behalf, and it was permissible at that time<sup>30</sup>.

Sociologically corruption is related to the sociological power. Corruption is a deviation from power. Power allows a person or a group to pursue a goal, and limited other people or groups to have choices or determine their attitudes. This power could be run without authority which is undoubtedly against the law. This corruption belongs to the category of power without the rule of law because there is always a presumption of the use of power to achieve a goal other than the purpose stated in that power. But not all the power without the rule of law is corruption because such power can be derived from patriotism. Power without the rule of law is an injustice; sometimes it is a result of corruption<sup>31</sup>.

<sup>29</sup> Mochtar Lubis and James C. Scott, *Korupsi Bunga Rampai*, Jakarta: LP3ES and Obor, 1995, p1.

<sup>30</sup> Theodore M. Smith, 1971, "Corruption, Tradition, and Change," *Indonesia*, 11, p24.

<sup>31</sup> HA. Brasz, "Beberapa Catatan Mengenai Sosiologi Korupsi," in Mochtar Lubis and James C. Scott, *Beberapa Catatan Mengenai Sosiologi Korupsi*, Jakarta: LP3ES and Obor, 1995, p5.

## CONCLUSION

The Corruption Court is established under Law Number 30 of 2002 on the Corruption Eradication Commission. Art. 53 is the legal foundation to indicate that Corruption Court is a Special Court in the General Court in handling corruption cases. The purpose of the establishment of the Corruption Court is: To realize law and justice for justice seekers by the provisions of the amendment of the 1945 constitution of the Republic of Indonesia. The provision is the main basis for establishing the court in Indonesia; The establishment of the Corruption Court should be based on the basic principle of independent judicial authority as stipulated in Law Number 48 of 2009; As part of the legal system, the establishment of the Corruption Court is to meet the need for legal certainty to support other legal systems; The alignment is the direction and design of legal and judicial reform under the Supreme Court. If there is no any alignment, then the Corruption Court will run outside of the existing system, and its effectiveness will be in doubt; The results of a comprehensive review of the level of needs above involve various parties including the Supreme Court and the Community.

To combat corruption in the judiciary, one of its efforts is to establish a Corruption Court. The judicial process of the Corruption Court is similar to the judicial process in the Criminal Court. However, there are different elements in the Corruption Court. The public prosecutor in the Corruption Court is the Corruption Eradication Commission (CEC). The CEC has the duty and authority to conduct an investigation and prosecution of corruption in the Corruption Court (Tipikor).



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